

1-1-.132 Third Party Tester Program. Amended

1. Definitions.

~~a. Cancellation. A Tester's or Examiner's certification is terminated by the Department because of some error defect in the certification or because the Tester or Examiner is no longer entitled to such certification. The cancellation of certification is without prejudice, and application for a new certification may be made at any time after such cancellation.~~

~~b. CDL. A commercial driver's license issued pursuant to O.C.G.A. §40-5-140, et seq. which authorizes an individual to operate a class of commercial motor vehicles.~~

~~c. Department. The Georgia Department of Driver Services.~~

~~d. Examiner. Any natural person, not an employee of the Department of Driver Services, who is certified by the Department of Driver Services as a Third Party Examiner to administer Commercial Driver's License testing through a Third Party Tester.~~

~~e. Compliance Analyst. Department of Driver Services employee responsible for conducting random examinations, inspections and audits of Third Party Testers and Examiners for compliance with federal and state laws and regulations.~~

~~f. Revocation. A Tester's or Examiner's certification is terminated by formal action of the Department, which privilege shall not be subject to renewal or restoration, except that an application for a new certification may be presented to and acted upon by the Department after the expiration of the applicable period of time prescribed by the Department. A revocation shall be for a period of at least one (1) year or indefinitely.~~

~~g. Suspension. A Tester's or Examiner's certification is temporarily withdrawn by formal action of the Department. This temporary withdrawal shall be for a period specifically designated by the Department.~~

~~h. Tester. Any employer or school engaged in conducting commercial driver's license testing through Third Party Examiners.~~

2.(1) Minimum Requirements for Examiners:

~~(a). Must be trained and certified to conduct skills testing for CDL's by the Department.~~

~~(b). Must comply with the following:~~

- (i) Must have a high school diploma or its equivalent.
- (ii) Must be a regular employee of the employer and recommended by the employer or must be a contracting Trainer/Examiner.
- (iii) Based on the results of a national criminal history background check, shall not be convicted of a felony or any other crime involving violence or a crime of moral turpitude, or a pattern of misdemeanors that evidences a disregard for the law unless ~~he or she~~they ~~have~~has received a pardon and can produce evidence of the same. For the purpose of this subsection, a plea of nolo contendere shall be considered a conviction. ~~For the purposes of this subsection, a conviction for which a person has been free from custody and free from supervision for at least ten (10) years will not be considered, unless the conviction is for an offense which is a sexually violent offense (dangerous sexual offense?) as defined in O.C.G.A. §42-1-12(10)(B)(B.1) or the criminal offense was committed against a victim who was a minor at the time of the offense.~~
- (iv) Shall not have any suspension or disqualification~~been convicted of any serious moving violation as defined in O.C.G.A. §40-5-142~~ within three ~~(3)~~(2) years prior to application.
- (v) Shall not have been enrolled or participated in a state approved Risk Reduction Program within the past ten (10) years.
- (vi) Must possess a CDL or be certified to administer CDL skills tests by the Department~~Must be qualified as a Commercial Motor Vehicle Operator and must either possess or be eligible for a CDL of the classification for which the Examiner will be conducting tests.~~
- (vii) Must successfully complete the Department's prescribed course in CDL classroom instruction and behind the wheel examination.
 - 1) ~~-(i) Must pass all relevant CDL Kknowledge and Eendorsement tests exams prior to attending the CDL Certification training class, depending on the class of vehicle they will be instructing.~~
 - 2) (ii) Upon completion of specialized training in classes A, B, and C, the Examiner will be issued a certification card qualifying them to examine applicants for skills in license classes equal to their training certification. Examiner certification will be valid for four (4) years unless suspended, revoked or cancelled.
- (viii) Must possess a valid certification card which shall be evidence of the Examiner's certification status.
- (ix) An Examiner whose certification has expired, cancelled, revoked or has been surrendered shall not administer any part of the CDL examination until completion of one (1) of the following:
 - 1) An Examiner with expired certification or who has surrendered ~~his or her~~their certification may apply for recertification within one (1) year ~~after the~~of expiration or surrender date of the previously issued certification by performing a CDL examination to the satisfaction of the Department.
 - 2) If more than one (1) year has lapsed since expiration or surrender, the Examiner must successfully complete the Department's prescribed course in CDL classroom instruction and behind the

wheel examination to become recertified. ~~This is consistent with active engagement rules in other regulated programs.~~

(x) Must conduct skills tests examinations of at least ten (10) different CDL applicants per calendar year, and the first must be administered within the first six (6) months of becoming certified. Failure to do so will result in suspension from conducting further CDL tests.

(xi) Must successfully complete a refresher training course and examination every four (4) years to maintain CDL certification.

3.(2) Minimum Requirements for Testers:

(a): Must be a Technical/Vocational School or Public School System, or an established business entity or organization that is licensed to do business in the State of Georgia and has been established to conduct business related to the commercial driver industry. ~~have an established business.~~

(b): Must have a fleet of at least two (2) CMV's registered to the Tester ~~more than one not less than 25 5 registered commercial motor vehicles.~~

~~e. Be a Technical/Vocational School or Public School System.~~

~~d(c): Must annually review and maintain adequate driver the MVR of each Examiner to determine if the Examiner meets the minimum requirements of this rule. records reflecting the annual driver history of each Examiner.~~

~~(d)e. Must enter into a Commercial Driver's LicenseCDL Third Party Tester Agreement with the Department.~~

~~(e)f. Must agree to have the Third Party Tester Program monitored by the Department and the Federal Motor Carrier Safety AdministrationFMCSA.~~

(i) The skills test rplan range/carousel and skills test route used must be be the one pre-approved provided by the Department.

(ii) All Examiners must submit to the Compliance Analyst and the CDL Program Manager a testing schedule to the Compliance Analyst and the CDL Program Manager for all testing to be conducted. All testing schedules must be submitted electronically to the Department using the method prescribed by the Department.

(iii) -This schedule must be submitted no later thanat least two (2) weeksseven (7) days in advance of the scheduled test.

(iv) -A twenty-four (24)-hour notice must be given for cancellations or any changes to the schedule.

(v) -Upon notification from the student of a test cancellation. Tthe Third PartyThird-Party Examiner must immediately contact his/hertheir assigned DDSDepartment CDL Compliance Analyst, by telephone or e-mail, and update their schedule electronically with the Department.

- (vi) ~~upon notification from the student of a test cancellation.~~ The ~~Monitor~~ Compliance Analyst may approve changes in schedules as necessary.
- (vii) ~~Testing must be conducted according to the schedule approved by the Department.~~
- (ii)(viii) ~~Unapproved testing. Testing at times and dates not submitted on the schedule or Monitor Compliance Analyst approved changes will violate the agreement between the Tester and the Department.~~
- (ix) ~~The Third Party~~ Third-Party Tester agrees to notify the Department ~~within ten (10) days of~~ thirty (30) days prior to any modifications to any resurfacing of the skills course/carousel.
- (iii)(x) ~~or remarking of the lines or markers in order for the Department to measure the skills test course for accuracy. However, the Third Party Tester does not have to notify the Department regarding repairs and maintenance to an existing skills course. The Department shall review and approve any modifications to the course/carousel within thirty (30) days of receipt of the Third Party Tester's notice informing the Department of such modifications.~~
- (f)g. Must ensure that all ~~e~~ Examiners employed by the Tester are certified by the Department and that the Examiners comply with the Department ~~R~~ ules and R egulations, all applicable state and federal laws, ~~and Department instructions,~~ and have passed a nationwide criminal background check.
- (g)h. Must provide a surety bond in the amount of \$10,000.00 (not applicable to state or governmental entities) per location
- (h)i. Shall maintain records, which shall be available for inspection by the Department during normal business hours. ~~Normal business hours shall be between 8:30 a.m. and 4:30 p.m. daily. One (1) hour of flexibility in the time may be observed as long as the school is open eight (8) hours per day.~~

4.(3) Test Administration

- (a). Skills tests will be conducted strictly in accordance with ~~policy~~ used procedures and guidelines utilized by the Department CDL Examiners. Such instruction may include information on skills test content, route selection/revision, test forms, Examiner procedures, and administration procedures and/or changes.
- (b). Skills tests shall be conducted:
 - (i) Only on test routes approved by the Department.
 - (ii) In a vehicle representative of the class and type of vehicle for which the CDL applicant seeks to be certified and for which the Examiner is qualified to test.
 - (iii) Using the Department approved content, forms, and scoring procedures.

(iv) _____ Only on approved days of the week during daylight hours only.

(iv)

(c). Only licensed Georgia drivers or drivers with approval from the Department may be tested.

~~(d. Third Party Examiners must complete each CDL test before beginning another test and may not start a test within two (2) hours of starting the previous test, unless the previous test was a failure.~~

de). Examiners shall not administer any part of a CDL test unless they have a valid Department DDS certification card.

~~(e)f. Must not test relatives (by blood or marriage), friends, or co-workers. Co-workers may be tested with prior approval of the immediate supervisor.~~

~~(f)g. Examiners are prohibited from administering a skills test to an applicant who was trained by that Examiner.~~

5.(4) Records to be maintained by Examiner:

(a). Third Party Tester Record:

(i) A copy of each Examiner's current DDS certification card along with a copy of their driver's license and the Third Party Agreement.

(ii) A copy of Examiner's ~~Motor Vehicle Record (MVR)~~ (by the anniversary of certification).

(iii) Tester Certifications must be displayed on a wall within the school.

(iv) Tester must maintain these records on an Examiner for at least two (2) years after that Examiner is no longer employed by that Tester.

(b). Third Party Examiner Record:

(i) A copy of DS 1235 (score sheet) on each applicant tested (passing or failing copies).

(ii) A copy of CLP and underlying driver's license

(iii) A signed copy of the CDL Skills Testing Information Agreement Form.

(iv) Documentation that the applicant has completed Human Trafficking Awareness training.

~~(iii)(v) Verification that the applicant has successfully completed Entry Level Driver Training (ELDT).~~

(vi) Must maintain these records for the previous two (2) years and for the current year.

~~(iv) —~~

6.(5) Notification Requirements:

(a). Testers must:

- (i) Notify the Department in writing thirty (30) days prior to any change in the Tester's or Tester Representative's name, address, and contact information.
- (ii) Notify the Department in writing within ten (10) days of any change in:
 - 1) i- The Examiners who are employed by the Tester; and
 - 2) ii- Any Examiner's driving status.
- (iii) 3- Notify the Department in writing within ten (10) days of any of the following occurrences:
 - 1) i- The Tester ceases to do business in Georgia.
 - 2) ii- The Tester fails to comply with any of the Department's requirements.
 - 3) iii- Examiner receives notice from the Department of any driver's license suspension, revocation, disqualification, cancellation or DUI conviction.
 - 4) iv- Any Examiner fails to comply with any of the Department's requirements.
- (iv) 4- Request and obtain approval from the Department of any proposed changes in the road skills test route(s) or Examiner administrative procedures.
- (b) b- The Examiner shall notify the Department within ten (10) days of leaving the employ of a Tester and return the DDS Examiner Certification Card.
- (c)- Testers must Reports to the Department:
 - (i) A copy of skills test roster of applicants tested.
 - (ii) A copy of test schedules.

(ii)

7.(6) Denial/Suspension/Revocation/Cancellation of Third Party Testing Program Certification-

- (a)- The Department may deny or cancel any application for a Tester's or Examiner's certification or cancel certification if the applicant does not qualify for certification under these rules. Misstatements or misrepresentations in the application may be grounds for cancellation.
- (b)- Any Tester or Examiner may must relinquish immediately surrender a theiier certification upon thirty (30) day written notice to the Department separation from the Tester. All forms, manuals, or supplies that the Department has furnished, including certification and certification identification cards of Examiners shall be must also be surrendered immediately.

(c)- The Department may cancel the Third Party Testing Program provided for in these requirements in its entirety or may cancel it in part.

(d)- The Department may suspend or revoke a Tester's or Examiner's certification upon any of the following grounds:

- (i) Failure to comply with or satisfy any of the provisions of these requirements, ~~the Department's instructions or the Third Party Tester agreement-~~
- (ii) ~~Falsifying, alteration, or misrepresenting~~ of any records or information relating to the Third Party Testing Program-
- (iii) Commission of any act which compromises the integrity of the Third Party Program-
- (iv) Failure to comply with ~~Federal Motor Carrier Safety Administration (FMCSA)~~ standards – allows a five (5) point maximum difference between ~~e~~Examiner scoring and Compliance Analyst scoring during monitoring event
- (v) Failure to fully cooperate with the Compliance Analyst, including failure to provide the Compliance Analyst access to:
 - ~~1)i-~~ All Third Party Tester Program and Examiner documents and records;
 - ~~2)ii-~~ Any facility where testing is performed, ~~;~~ or
 - ~~iii. For the Examiner, driver's license suspension, revocation, recall, or disqualifications-~~

(e)- Suspension/Revocation and Appeal Procedures-

- (i) Upon determining that a Tester's or Examiner's certification should be suspended, revoked, or cancelled the Department shall notify the Tester or Examiner by in writingmail. ~~If mailed, s~~Such notice shall be deemed received three (3) business days after mailing.
- (ii) The notification shall notify the Tester or Examiner of the following:
 - 1) i- That the Tester or Examiner may, within ten (10) days of receipt of the notice, request a hearing. The request must be in writing and received by the Department within the period specified.
 - 2) ii- That if the Department does not receive a written hearing request within the ten (10) day period:
 - a) A- The suspension, revocation, or cancellation will be effective upon the expiration of the ~~fifteen (15)~~ten (10) day period.
 - b) B- Any rights to an appeal and hearing shall be considered to have been waived; and

~~(iii) 3.~~ Upon receipt of a timely, written hearing request, the Department shall forward the request to the Office of State Administrative Hearings (OSAH).

~~(iv) 4.~~ The hearing and appeal procedures shall be as specified in Ga. Admin. Comp. Ch. 375-3-3-.04 Ga. Comp. R. & Regs. R. 375-1-1-.06.

~~(v) 5.~~ A Tester or Examiner who timely requests a hearing may continue to administer CDL testing pending issuance of a final decision by the Administrative Law Judge.

~~(f. Emergency Order.~~

- ~~1. If the Department determines that a Tester's or Examiner's certification should be suspended, revoked, or cancelled and that the public health, safety, or welfare imperatively requires emergency action, the Department is, upon expressly so finding, authorized to issue an emergency order suspending or revoking the Tester's or Examiner's certification.~~
 - ~~2. The Emergency Order shall incorporate such a finding and shall notify the Tester or Examiner of the following:~~
 - ~~1. The Emergency Order is effective upon receipt of the Order.~~
 - ~~2. The Tester or Examiner may, within ten (10) days of receipt of the notice, request a hearing. The request must be in writing and received by the Department within the period specified.~~
 - ~~3. If the Department does not receive a written hearing request within the ten (10) day period, any rights to an appeal and hearing shall be considered to have been waived.~~
 - ~~3. The Order shall be served on the Tester or Examiner by personal delivery or mail.~~
 - ~~4. Upon receipt of a timely, written hearing request:~~
 - ~~1. The Department shall forward the request to the Office of State Administrative Hearings (OSAH).~~
 - ~~5. A Tester or Examiner who timely requests a hearing may not continue to administer CDL testing pending issuance of a decision by the Department hearing officer or Administrative Law Judge.~~
- ~~gf) .~~ Reinstatement: A Tester or Examiner may apply for certification reinstatement at the end of a suspension period.

~~(hg).~~ No current employee of the Department, or any spouse, dependent child, dependent stepchild, or dependent adopted child of such employee, shall be certified by the Department as a Third Party Tester or Examiner.

Authority: O.C.G.A. §§ 40-5-156, 40-16-5, and ~~49~~ C.F.R. § 384.201, 49 C.F.R. § 390.9.

SYNOPSIS

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this amendment is to review and update the Commercial Driver's Licensing rules.

DIFFERENCE BETWEEN EXISTING AND PROPOSED RULE

The proposed amendment removes the definitions, which have moved to the new Commercial Driver's License Definitions and Acronyms rule. Examiners shall not be convicted of a felony or any other crime involving violence or a crime of moral turpitude, or a pattern of misdemeanors that evidences a disregard for the law unless they have received a pardon and can produce evidence of the same, which is changed from only within the past ten years. Examiners shall not have any suspension or disqualification within the past two years, which is changed from any serious moving violation within the past three years. The minimum requirement of registered commercial motor vehicles in the fleet of a Tester is changed from twenty-five to two. The Examiners testing schedule must be submitted no later than seven days (changed from two weeks) in advance of the scheduled test. The Tester must notify the Department thirty days prior to any modifications to the skills course/carousel, changed from ten days prior. The requirement that Third Party Examiners must complete each CDL test before beginning another test and may not start a test within two (2) hours of starting the previous test unless the previous test was a failure is removed. Co-workers may be tested with prior approval of the immediate supervisor is added. The Examiner must maintain documentation that the applicant has completed Human Trafficking Awareness training and verification that the applicant has successfully completed Entry Level Driver Training. Reference to an Emergency Order is removed because it is no longer used. The rule title, numbering format, and statutory authority are updated.